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A LIMITED LIABILITY LAW PARTNERSHIP

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COMMISSION ON WATER
RESOURCE MANAGEMENT

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May 26, 2009

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Commission on Water Resource Management
P. O. Box 621
Honolulu, Hawaii 96809

Re: Water Use Permit Application – Na Wai Eha Surface Water Management Area

Dear Applicants and Commission:

Hawaiian Commercial & Sugar Company (HC&S) files this “objection” to the above-referenced water use permit application for the purpose of ensuring that competing applications are considered together and in relation to one another.

FILE ID:	_____
DOC ID:	_____

HC&S is the owner or lessee of lands designated by the following TMK numbers:

TMK #3-6-002:001
3-6-002:003
3-6-004:003
3-6-004:006
3-8-005:023
3-8-005:002
3-8-005:002
3-8-005:003
3-8-005:017
3-8-005:018
3-8-006:001
3-8-006:003
3-8-008:008
3-8-008:035
3-8-008:036

These lands are currently irrigated with water from the Na Wai Eha surface water management area and HC&S has filed two water use permit applications for allocations to continue existing uses of these waters.

Currently, the interim instream flow standards (IIFS) for Na Wai Eha are in the process of being amended. When that process is complete, there is a likelihood that the amount of water available for offstream uses will be insufficient to satisfy all the applications for existing use allocations in the amounts requested.

Hawaii Revised Statutes (HRS) § 174C-50(h) addresses that situation by providing:

Two or more existing uses of water are deemed to be competing when they draw water from the same hydrologically controllable area and the aggregate quantity of water consumed by the users exceeds the appropriate sustainable yield or instream flow standards established pursuant to law for the area. If applications are made to continue existing uses which are competing and the uses otherwise meet the requirements of subsection (b) [reasonable-beneficial], the commission shall hold a hearing to determine the quantity of water that may be consumed and the conditions to be imposed on each existing use.

See also Hawaii Administrative Rule (HAR) § 13-171-14(c).

HRS § 174C-50(h) and HAR § 13-171-14(c) provide for a combined hearing on all competing applications. However, HAR § 13-171-19(a), which states that “[i]n the event no statement of objections is filed, the commission may proceed to approve or reject the permit application,”

May 26, 2009

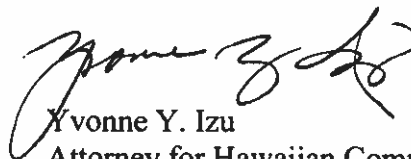
Page 3

could potentially be interpreted to be an exception to the hearing requirement of HRS § 174C-50(h) and HAR § 13-171-14(c).

To ensure that all competing applications are considered together and in relation to one another, as contemplated by the Water Code, HC&S is filing this objection to all water use permits filed for allocations within the Na Wai Eha surface water management area.

Should you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Yvonne Y. Izu", is written over the typed name.

Yvonne Y. Izu
Attorney for Hawaiian Commercial &
Sugar Company

cc: HC&S